N. No. 281 of the B.M.A. Gazette dated 29th March 1946). We have no doubt that the amendment is within the powers conferred by section 3 (1) (k) of the Proclamation. The authority is thereby empowered to prescribe "penalties" for any offences against the regulations. The word "penalties" is used alone, and we see no reason to limit its meaning by excluding the penalty of forfeiture.

But by Reg. 81 of the Essential Regulations as amended by G. N. No. S 81 of the Supplement dated 26th July 1946 the appellant could have been brought to trial before the High Court, which is provided with power to impose a maximum sentence of 2 years imprisonment or a fine of $20,000.00 or both. We agree that the learned District Judge was right in taking a serious view of this case, and that it called for a severe financial penalty — which it would have been within the power of the High Court to inflict. But we cannot agree that he properly exercised the discretion which the amendment gives him when he made an order for the forfeiture of goods amounting in value to seventy times the maximum fine which he could impose. The amendment gives him no power to order a partial forfeiture. Then in this case he should have made no order for forfeiture, because such an order was tantamount to evading the limit which is clearly intended to be placed upon his penal powers. In a case where the value of the goods so greatly exceeds the maximum fine which a District Court is empowered to impose, if it is considered that forfeiture of the goods should be part of the penalty, then in our opinion the case should be brought before the High Court which is vested with more extensive powers.

Nor do we agree with the learned District Judge when he says that the four charges were so related that he ought not to impose more than a nominal penalty for the second, third and fourth charges. As he properly says in paragraph 4 of his Grounds of Decision: "This was not merely a case of attempting to export goods without a licence but of attempting to export them by pretending that sulphate of ammonia was sago flour." By making the two false declarations in Ex. C and D the appellant obtained permits to export 1,100 bags as sago flour. That is the subject of charge 2. By making the false declaration in Ex. H he attempted, unsuccessfully, to obtain another permit to export a further 500 bags as sago flour. This is the subject of charge 4. It is one thing to attempt to export goods without a permit. It is quite another thing to obtain, or attempt to obtain, a permit by falsely declaring the goods to be other than what they are. In one case the law is broken by being ignored. In the other the law is broken by a positive act of deceit. We agree that the omission to furnish a proper description of the goods to the Registrar, whch is the subject of charge 3, is so related to charge 1 that it calls for no more than a nominal penalty. But the offences of making the false declarations in charges 2 and 4 are quite separate and distinct from the offence of attempting to export in charge 1, and should have been punished accordingly.

The order for forfeiture is quashed. For the fines imposed on charges 1, 2 and 4 we substitute fines of $1,000.00 on each of those three charges, or, in default of payment, 6 months R.I. on each charge. The sulphate of ammonia is ordered to be restored to the appellant.

Murray-Aynsley, C. J. : — I agree.

Gordon-Smith, J. : — I agree.

Order of Forfeiture Quashed, Sentence Altered.

QUINN AND HOWLAND v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) May 27, 1949]

[Singapore — Cr. App. No. 1 of 1949]

Criminal Procedure Code, Ss. 176 and 177 — Charge of one offence — Conviction for different offence — Legality of — Commission of latter offence appearing in evidence.

The two appellants were charged as follows:—

"That you, (1) James John Quinn, and (2) Robert Howland, on or about the 12th day of May, 1948, at or near Tanglin Road, Singapore, did commit robbery of a motor-car, No. S. 6841, of the approximate value of $2,000/- the property of one Lee Kong Eng and then in his possession, and at the time of committing the said robbery you did voluntarily cause hurt to the said Lee Kong Eng and thereby committed an offence punishable under Section 394 of the Penal Code (Cap. 20)"

At the conclusion of the trial the Jury found the appellants not guilty of robbery of the motor-car but guilty of attempted robbery of the money. This verdict was fully supported by the evidence. The appellants were convicted. This appeal was against conviction and sentence.

Held, that the verdict was one that might lawfully be returned by virtue of S. 177 of the Criminal Procedure Code.

Begu v. King Emperor[1] followed.

Cases referred to :—

(1) *Begu v. King Emperor*, 52 I.A. 191; A.I.R. 1925 P.C. 130.

(2) *Maher Sheikh v. Emperor*, I.L.R. 59 Cal. at p. 14.

(3) *Istahar Ahondkar v. Emperor,* I.L.R. 62 Cal. 956.

(4) *In Nga Po Kyone v. Emperor* A.I.R. 1933 Rang. 236.

(5) *Public Prosecutor v. Paw Sei Puan and Nine Others* (1939) M.L.J. 159.

COURT OF CRIMINAL APPEAL.

S. H. D. Elias for the Appellants.

A. D. Farrell (D. P. P.) for the Respondent.

Cur. Ad. Vult.

Murray-Aynsley, C. J. : — In this case the two appellants were charged as follows :—

> You, (1) James John Quinn, and (2) Robert Howland, on or about the 12th day of May, 1948, at or near Tanglin Road, Singapore, did commit robbery of a motor-car, No. S. 6841, of the approximate value of $2,000/- the property of one Lee Kong Eng and then in his possession, and at the time of committing the said robbery you did voluntarily cause hurt to the said Lee Kong Eng and thereby committed an offence punishable under Section 394 of the Penal Code (Cap. 20).

The victim of the robbery Lee Kong Eng, a taxi-driver, alleged that he had been attacked by two soldiers, whom he could not identify, and that the attackers had demanded his money (but not that they had made any other effort to take possession of it) and subsequently made an attempt to drive away in his taxi and actually had driven it some distance. There was some circumstantial evidence against the appellants but the most important evidence on the question of identity was that given by the appellants themselves. They told a story that they at about the same time and place assaulted a taxi-driver in a manner similar to that described by Lee Kong Eng. They did, however, deny that any robbery had taken place or been attempted. It was suggested on behalf of the appellants that there may have been two distinct assaults on taxi-drivers. The learned Judge expressed his opinion briefly and vigorously on this point. This has been objected to but, in our opinion, a careful examination of the evidence of Lee Kong Eng and of the appellants makes it impossible to suppose that the two versions refer to two separate incidents. We think, therefore, that it is established that the appellants were concerned in the affair.

As has been shown above, the charge to which the appellants had pleaded specified the motor-car of the complainant, and made no reference to any attempt at stealing the money.

In his evidence the complainant described the attempt to obtain the money as well as the attempt to drive off the car. In this his evidence corresponded substantially with his original complaint and with his deposition.

In the course of his summing-up the learned Judge directed the jury that they might find the appellants guilty

> FIRST: Guilty of committing robbery of a taxi and causing hurt as charged.
>
> Before you can find them guilty of that you will have to be satisfied that they committed this violence in the course of putting into effect the dishonest intention to take the taxi. If you negative that — if you find them not guilty of that — then you will have to consider the next possible verdict:
>
> Whether or not they are guilty of attempting to commit robbery of Lee Kong Eng's cash and at the time of committing it or attempting to commit it voluntarily causing him hurt.
>
> That is Lee Kong Eng's evidence. If you believe Lee Kong Eng's evidence you will find them guilty. If you find them not guilty of that, then you will have to consider the third possible verdict.

Eventually the jury found the appellants not guilty of robbery of the motor-car but guilty of attempted robbery of the money. This verdict was fully supported by the evidence and whether it can stand or not depends on whether it is in accordance with the provisions of the Criminal Procedure Code.

It will I think be conceded that as a general rule a person can only be convicted of an offence if he is charged with it. If he is to be convicted otherwise the case must come within a statutory exception. It will, I think, be further conceded that the only exception that can be relied on in the present case is provided by section 177 of the Criminal Procedure Code. That section reads as follows :—

> 177. — (1) If in the case mentioned in section 176 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.
>
> Illustration.
>
> A is charged with theft. It appears that he committed the offence of criminal breach of trust or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods, as the case may be, though he was not charged with such offence.
>
> (2) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

It will be seen that it is closely linked with section 176 which reads as follows :—

> 176. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged

in the alternative with having committed some one of the said offences.

Illustration.

(a) A is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft or receiving stolen property or criminal breach of trust or cheating.

(b) A states on oath before the committing Police Magistrate that he saw B hit C with a club. Before the High Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

It is I think desirable to consider the latter section first. For that section to have effect it is necessary to presuppose a state of affairs in which a person has the duty of framing a charge and it is uncertain what offence can be proved against the accused. Uncertainty in this respect can be of three kinds. The facts can be quite certain but there may be doubt as a matter of law which section covers such facts. There may be a case where the prosecution is in a position to prove certain facts from which the Court may draw one of several inferences. A common instance of this state of affairs arises in cases of recent possession of stolen goods, where the Court may draw the inference of stealing or receiving. The third case is where, as so often happens, the prosecution is uncertain how much the evidence produced will convince the Court when the case comes on for trial.

The illustrations are not helpful. In (a) A is charged with an act. In ordinary language people are not charged with acts but with offences. Further the act must be one which may amount to theft or receiving stolen property or criminal breach of trust or cheating, a state of affairs which I should have thought was impossible in the course of nature. It is therefore impossible to construe the words literally. I think that the illustration means that certain facts are alleged which, if proved, will permit the Court to draw one of the four inferences.

The other illustration is of a different kind altogether. Two acts are to be proved, one of which, which cannot be proved, must be an offence. I think it is a mistake to make use of illustrations, which are only intended to be examples, in order to place a restrictive interpretation on the section they are designed to illustrate.

I think that the difficulties which have arisen come from the ambiguity of the words "the facts which can be proved will constitute".

The general interpretation adopted by Courts in India has been of a certain body of facts known in advance, the only doubtful matter being one of application of law to those facts, or possibly the question of drawing inferences from those facts. I do not myself consider that it is necessary to put such a restrictive interpretation on those words. "The facts which can be proved" is not something which exists at the time but something which is hoped for in the future. I think that the words may be taken to include doubts of the third kind which I have described above, not merely of the first and second kinds. The second illustration at least shows that the section is not limited to cases of single acts which fall within the scope of different sections but also of different acts all of which may fall within the same section.

The difficulty of interpreting this section is also, because it is referred to, the difficulty of construing the next one. Apart from the restriction introduced by the references to the preceding section, section 177 is wide enough to render a person liable to be convicted of anything proved by the evidence actually produced at the trial. I am not concerned at present with what the limits of the application of the section may be but it seems to me clear that where, as in the present case, the prosecution was in a position to charge in respect of more than one act, a conviction will be good in respect of any of such acts which might have formed the basis of a charge but which in point of fact did not.

I now consider this interpretation in the light of decided cases. As far as I am aware the only Privy Council case on the subject is *Begu v. King Emperor*[1]. If that covers the present case, then that is the end of the matter. The case is not reported at very great length and the report is in some respects unsatisfactory. It appears that the appellants had been charged with murder and convicted under s. 201 of the Penal Code. The point was taken that there was no charge under the latter section. The case for the appellants was argued by counsel of great experience in Indian law who argued the point on the interpretation of Indian sections 236 and 237. Presumably he cited Indian authorities on the subject. It appears that the evidence at the trial had been directed to two matters implicating the accused, *viz.* identification of the appellants at the time and place of the murder, and acts subsequent to the murder, namely the removal of the body of the deceased and its concealment. The Court of first instance seems to have not been satisfied with the evidence on the first point but to have accepted the evidence on the second and so convicted the appellants, as I have said.

It should be noted that the evidence on the second point does not directly implicate the appellants in the murder. It might have some value in proving intention and might be considered to have some value in strengthening the evidence of identification, but the acts for which the appellants were convicted formed no part of the murder. The judgment of the Board, which included one member with considerable Indian experience, was delivered by Lord Haldane. In the course of it he said: "The substantial question upon the appeal arises upon s. 237 of the C.P.C." After reading sections 236 and 237 he continued: "The illustration makes the meaning of these words quite plain. A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made."

It is clear that the point was essential to the determination of the case, and that it was decided after consideration of the relevant sections. There can be no question of the words being *obiter* or spoken *per in curiam*. As far as this Court is concerned it must remain the authoritative interpretation of the section.

I would not have expressed myself at such length if it were not for a considerable number of Indian decisions, later in date than *Begu's* case, which appear to conflict with it.

What may be called the orthodox Indian interpretation is expressed succinctly by Lort-Williams, J. in the case of *Maher Sheikh v. Emperor*[2]. "Section 237 applies only to cases which fall within the provisions of section 236. Section 236 applies only to cases where on the facts, proof of which is in the possession of the prosecution, it is clear beyond doubt, if the evidence be believed, that one or more of several offences, but doubtful in law which of them, has been committed. When the facts themselves are in doubt the sections do not apply."

To my mind it is impossible to say that *Begu's* case was decided on those lines. Further, the second illustration to s. 236 is the clearest possible example of a doubt of fact and not of law. In the same case Ghose, J. referred to *Begu's* case as follows: "Mr. Kundkar has relied on the decision of the Judicial Committee in the case of *Begu v. King Emperor*[1]. That case shows that s. 237 must be read with s. 236, and indeed no authority is required for that proposition, though it has been stated repeatedly. The true test is whether the facts are such as to give the accused notice of the offence for which he is going to be convicted, though he was not charged with it, so that he is not prejudiced by the mere absence of a specific charge." If this means that the acts alleged in the charge give the accused notice of the charge on which he is convicted, then *Begu's* case does not decide this; if it is sufficient for the accused to have notice *aliunde*, e.g. in the depositions, then this proposition does not agree with what the learned Judge says elsewhere in his judgment, the purport of which is to support what I have described as the orthodox Indian view.

In the case of *Istahar Ahondkar v. Emperor*[3]. Lort-Williams, J. (at p. 960) deals with *Begu's* case. Both he and Jack, J. were compelled to admit that it cannot be reconciled with the general trend of Indian decisions and proceed to dissent. It is interesting to note that Jack, J. gives a paraphrase of s. 236 in which he adds the words "if the facts as alleged by the prosecution are established." I think that if one is to accept the Indian authorities, one must presuppose some such words, but I can see no justification for so doing.

This Court is bound by *Begu's* case[1]. Even if we are not, in my humble opinion, it is correctly decided.

The appeal against conviction is dismissed.

Gordon-Smith, J. : — In this appeal Mr. Elias submitted that the verdict was wrong in law and further submitted that the verdict was unreasonable and could not be supported on the facts.

The two accused were charged jointly with committing an offence punishable under Section 394 of the Penal Code, that is, in committing or attempting to commit robbery, voluntarily causing hurt. The subject matter of the robbery was a Taxi S.6841, the property of Lee Kong Eng, to whom hurt was caused.

The accused were found not guilty of the charges as framed but were found guilty of attempted robbery of cash from the complainant and of causing hurt in such attempt. Mr. Elias submitted that this latter verdict could not be sustained as it did not come within the scope of section 177 of the Criminal Procedure Code.

It is not disputed that Section 177 only refers to cases coming within the ambit of Section 176. These two sections read as follows :—

> 176. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.
>
> 177.—(1) If in the case mentioned in section 176 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under

that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

(2) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

In my opinion Section 176 covers doubt from two points of view, firstly doubt as to what actual facts can be proved by evidence which may, or may not constitute an offence, and doubt when facts have been proved, as to what the specific offence has been committed when the necessary facts constituting an offence, have been proved.

In such cases and on the authority of Section 177 when it appears by the evidence that the accused committed an offence for which he might have been charged under Section 176, either in the alternative or otherwise, then he may be convicted of that other offence although he was not specifically charged with it. In this present case the real substance of the charge was the voluntary causing hurt during the course of committing or attempting to commit robbery. The only distinction between the charge framed and that for which the accused were found guilty was in the subject matter of the robbery, i.e. the Jury found the accused not guilty of robbery of the taxi but guilty of attempting to rob the complainant of cash from his person. This additional matter of the attempt to rob the complainant of his cash might easily have been added to the charge as framed, in which case no exception could possibly have been taken to the verdict of the jury.

Mr. Elias quoted a number of Indian cases shewing that in some Courts in India a narrower view has been placed on these Sections (the Indian C.P.C. relevant sections are exactly the same as ours) in support of his submission in this respect.

It is to be observed however that the Indian Courts are not consistent in this respect and *In Nga Po Kyone v. Emperor*[4], the head note reads as follows :—

The contention that the provisions of Sections 236 and 237 only apply in cases where the law applicable is doubtful and do not apply in cases where the facts are doubtful, is not sound. These sections do not say that they are applicable only when the facts are clear but the law is doubtful.

In any case these Indian cases are not authoritative and binding on this Court but the case that is authoritative and which is binding is *Begu and others v. Emperor*[1] a Privy Council decision. In that case a number of accused were charged with murder under S. 302 of the Penal Code, and two were convicted of murder, three others being convicted of an entirely dissimilar offence under Section 201 (causing the evidence of crime to disappear) although they had not been charged with that offence. The Judgment of the Board was delivered by Lord Haldane and discusses Ss. 236 and 237 and the illustrations given. Lord Haldane then states "They were not charged with that formally (i.e. S. 201) but they were tried on evidence which brings the case under S. 237. Their Lordships entertain no doubt that the procedure was a proper procedure and one warranted by the Code of Criminal Procedure."

This, in my opinion, is ample authority for upholding the conviction in this respect.

Mr. Elias also quoted a local case *Public Prosecutor v. Paw Sei Puan and Nine Others*[5]. In this case three of the accused were charged with riot having previously been acquitted on a charge of murder and a preliminary objection on the ground of *autre fois acquit* was overruled. There is nothing in this case to support Mr. Elias' submission.

Mr. Elias contended that there had been misdirection in the summing up, more particularly in regard to the question of identification and intention but these matters were put plainly before the jury for its consideration and also the possible verdicts that might be arrived at, including a verdict of not guilty of anything. After listening to the evidence of the two accused themselves there could be no possible doubt whatever as to identification. As regards intention this matter also was put clearly as is evidenced by the fact that the jury found the accused not guilty of robbery of the taxi itself. No fault can, in my opinion, be found with the summing up. It follows, therefore, that in my opinion, there is no substance in the appeal which should be dismissed.

Evans, J. :—The appellants were convicted on 11th January last of voluntarily causing hurt in attempting to commit robbery and were sentenced to 3 years R.I. and 12 strokes of the rotan and to 4 years R.I. and 12 strokes of the rotan respectively. They have appealed against this conviction and sentence, and the only ground of substance in that appeal is whether the verdict was rightly entered on the charge laid.

The appellants were charged :—

That you, (1) James John Quinn, and (2) Robert Howland, on or about the 12th day of May, 1948, at or near Tanglin Road, Singapore, did commit robbery of a motor-car, No. S. 6841, of the approximate value of $2,000/- the property of one Lee Kong Eng and then in his possession, and at the time of committing the said robbery you did voluntarily cause hurt to the said Lee Kong Eng and

thereby committed an offence punishable under Section 394 of the Penal Code (Cap. 20).

The section under which they are charged reads :—

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person, jointly concerned in committing or attempting to commit such robbery, shall be punished with penal servitude for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine or to whipping with a cat-o'-nine tails or a rattan.

The charge might perhaps have been objected to on the ground of duplicity. The section defines an offence of voluntarily causing hurt while committing or attempting to commit robbery and not a double offence of robbery and voluntarily causing hurt. The method of charging these offences as 3 separate charges is the subject of the illustration to section 175 (3). It was not observed. No objection has ever been made on this ground, and the appellants do not appear to have been prejudiced or impeded in their defence by the form of the charge. The robbery laid in full is the robbery of a motor car.

Evidence was given, and was apparently accepted by the jury, of acts of violence perpetrated by two soldiers who, the jury seem to have thought, were the appellants on the driver of the taxi which is referred to in the charge and in which they were travelling. The prosecution also sought to prove a short and, apparently, purposeless asportation of the car. The taxi driver gave evidence of a demand for money, but his story was that he escaped from his assailants in the taxi, and stopped a passing car which turned out to be a Military Police patrol. The appellants were not arrested on the spot. The driver was at once taken to a police station and the Military Police give as the reason for not pursuing the assailants an account of the taxi driving off. If it moved at all it did not move far.

At the conclusion of the prosecution case the counsel for the appellants submitted there was no case on the charge of robbery and suggested amending the charge. The learned Judge refused to withdraw the case of robbery from the jury and indicated that he might ask the jury to consider a case based on an attempted robbery of money.

The appellants now argue that the only power to find a prisoner guilty of an offence other than that charged is to be found in Section 177 of the Criminal Procedure Code. This section applies only to cases which might fall within Section 176. Counsel cited a number of Indian cases going to shew that this section only applies where the facts are clear. The section does not in terms say anything of the kind. In general it applies to alternative as opposed to cumulative charges as in Section 175. The cases cited appear to me to throw little light on the matter, nor does reference to "similar" offences seem to help. In the case of receiving and theft there is nothing similar in the acts constituting the offences the nexus is in the object of the offence, and, as in *Begu's* case, the question is the degree of participation in the whole transaction. In that case there was also a joinder of persons, the evidence against all being the same. The only purpose of joinder of charges or persons is to decide all cases in a single trial. It is essentially a matter which is in the discretion of the trial judge, and which must be decided on the facts of the individual case. I do not think any useful purpose can be served in laying down rules for its exercise even had we authority to do so. The only question here is whether there could properly have been a joinder of the offence found under section 176.

The appellant insisted and for his purpose had to insist that robbery of a car is a separate or different offence from robbery of cash. This may well be so. If at a different time it is so. It cannot be committed at exactly the same time. Nevertheless had the robbery charge here read "of a motor-car etc. and of x currency notes to the value of y" it could not on the facts in this case have been objected to as charging two offences.

The charge laid was under section 394 of the Penal Code and the offence found is not an attempt to cause hurt while committing robbery, but causing hurt in an attempted robbery. The robbery only came into this charge as the occasion of the offence to a person, and, where the robbery is inchoate, it seems to me there can and need be, no necessity, generally, to specify the property as "the thing if any, in respect of which" the offence was committed, though it might in some cases be required, "to give the accused sufficient notice of the matter with which he is charged." This offence found is the second and alternative offence defined in section 394 and a charge thereunder not only might, but should, have been inserted as on the facts propounded it was the only one bound to succeed were the facts accepted. It would have been an alternative charge. It would have been triable at the same time and would undoubtedly have come under section 176 being dependent on the doubt as to what conclusion the jury came to on the *animus furandi* in each case. The certain facts here were the assault and hurt, there was and must be a doubt as to the intention or purpose properly inferred.

In felonious wounding the act may be laid with one or more of several intents. In such cases a charge of one intent will not support a finding of another, but that is not the law here. Such offences it seems to me would most clearly come within Section 176. Here there is something more than intention but it seems that alternative counts of causing hurt in attempted robbery, or in attempted robbery of a car and money, or, alternatively laid, as in attempted robbery of a car or money could all have been properly joined. The demand for money which the jury seems to have believed, was always part of the complete story. I do not think the defence could have been in any way prejudiced by such joinder. There is in my opinion no substance in this point.

Appeal Dismissed.

IN THE ESTATE OF ABRAHAM PENHAS (DECEASED) TAN SOO ENG (WIDOW) v. ISAAC PENHAS.

[Orig. Civil Juris. (Gordon-Smith, J.) Sept. 13, 1949]

[Probate No. 119 of 1946]

Marriage — Marriage of Jewish gentleman and Chinese lady — Consensual Marriage — Succession.

The principal issue in this case was whether the Petitioner Tan Soo Eng is or is not the lawful widow of Abraham Penhas. The evidence was that the deceased a member of the Jewish faith married the plaintiff according to Chinese rites and thereafter lived with and had children from her.

Held, that on the facts the parties had entered into a consensual contract of marriage and that as neither party was incapacitated in law or otherwise from entering into such a contract, the marriage was valid according to the law of the Colony.

Cases referred to: — See APPENDIX.

Claude da Silva, N. A. Mallal and *G. E. N. Oehlers* for the Plaintiff.

John Laycock and *D. Murphy* for the Defendant.

Gordon-Smith, J. : — In this Petition for Letters of Administration against which the defendant had entered a caveat, an issue was ordered to be tried between the petitioner and caveator in the following terms "whether the petitioner Tan Soo Eng is or is not the lawful widow of Abraham Penhas and if the answer is in the affirmative when the said Tan Soo Eng married the said Abraham Penhas." It is a brief and easy question to ask but difficult to answer in view of the facts and circumstances of the case in relation to the law and it is therefore necessary in the first instance to find what are the definite facts.

Briefly, the plaintiff alleges that she married Abraham Penhas the deceased on or about the 25th December 1937 and subsequently bore him two children. Shortly after the occupation of Singapore by the Japanese in February 1942 the deceased appears to have been liquidated by the Japanese.

By her petition she asks for Letters of Administration to the estate of the deceased as his lawful widow. A caveat was entered by the defendant who is a younger brother of the deceased.

Evidence *de bene esse* on behalf of the defendant, of Wing Commander Rev. S. M. Block, the senior Jewish Chaplain to the Armed Forces in the Far East was recorded in October 1947. I will refer to this evidence later together with the other evidence for the defendant.

The evidence for the plaintiff in the main is uncontradicted and cannot be contradicted by the defence because it is alleged that the deceased's family had no knowledge whatsoever of the plaintiff or of her ever having been married to the deceased. The evidence for the plaintiff consists of her own evidence, that of her mother, Sing Peng Neo, Koh Chay Bo Poh, Ng Ah Kia and other witnesses. The story told by the plaintiff and her mother is that in September 1937 an introduction was effected between the deceased and themselves with a view to marriage and this marriage was discussed at a meeting in the Botanical Gardens between them, when there were present the go-between, the plaintiff, her mother, and the deceased. Apparently satisfactory arrangements were made at this meeting and the deceased gave the plaintiff an envelope containing $500.00 suggesting that she and her mother looked out for a house as being more suitable than where they were living at that moment, which was on a second floor over some business premises. Shortly afterwards the plaintiff and her mother found a suitable house at 508, Sims Avenue, and removed there. The deceased came and visited them there and they got better acquainted and an early marriage was suggested. The plaintiff suggested a marriage ceremony but the deceased said that this was not possible in the Jewish Synagogue and on her suggesting a marriage according to Chinese rites and on being supplied with details, the deceased agreed. A day was appointed and a ceremony took place just before Christmas 1937. Both the plaintiff and her mother and another guest who were present have described this ceremony in detail. The deceased had already given the mother $500.00 for the expenses of the wedding and wedding feast. On the appointed